



U.S. Department of Justice

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November 3, 2010

Samuel Kauffman
Garvey Schubert Barer
121 SW Morrison Street, 11th Floor
Portland, Oregon 97204

Re: *United States v. Harold James Nicholson*, Case No. 09-cr-40-1-BR
Plea Agreement Letter

Dear Counsel:

1. **Parties/Scope:** This plea agreement is between this United States Attorney's Office (USAO) and defendant, and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement does not apply to any charges other than those specifically mentioned herein.
2. **Charges:** Defendant agrees to plead guilty to Count 1 of the Indictment, which charges the crime of Conspiracy to Act as an Agent of a Foreign Government in violation of Title 18, United States Code, Sections 371 and 951. Defendant will also plead guilty to Count 3 of the Indictment which charges the crime of Conspiracy to Commit Money Laundering in violation of Title 18, United States Code, Section 1956(a) and (h).
3. **Penalties:** The maximum sentence for Count 1 is five years' imprisonment, a fine of \$250,000, three years of supervised release, and a \$100 fee assessment. The maximum sentence for Count 3 is twenty years' imprisonment, a fine of \$500,000, and three years of supervised release. Defendant agrees to pay the \$100 fee assessment per count by the time of entry of guilty plea or explain to the Court why this cannot be done.
4. **Dismissal:** The USAO will move at the time of sentencing to dismiss any remaining counts against defendant. The USAO further agrees not to bring additional charges against defendant in the District of Oregon arising out of this investigation, known to the USAO at the time of this agreement.
5. **Advisory Guideline Calculation:** The parties agree that no guideline has been expressly promulgated for a conviction under Title 18, United States Code, Section 951, or conspiracy to commit that offense, as alleged in Count 1 of the Indictment. The parties agree that pursuant to U.S.S.G. § 2X5.1, and based upon the facts of the case, the most analogous offense guideline is the money laundering guideline set forth in U.S.S.G. § 2S1.1. This guideline also applies to Count 3, Conspiracy to Commit Money Laundering.

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The parties agree that defendant was involved in the underlying Specified Unlawful Activity (Espionage) and a cross-reference to U.S.S.G. § 2M3.1 is appropriate resulting in a base offense level of 42. There is an additional upward adjustment pursuant to § 2S1.1(b)(2)(B) because defendant sustained a conviction under Title 18, United States Code, Section 1956. The parties agree that the total offense level prior to any departures is 44.

6. **Acceptance of Responsibility:** Defendant must demonstrate to the Court that he fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for his unlawful conduct in this case. If defendant does so, the USAO will recommend a three-level reduction in defendant's offense level (two levels if defendant's offense level is less than 16). The USAO reserves the right to change this recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

7. **Joint Sentencing Recommendation:** Assuming defendant demonstrates an acceptance of responsibility, the parties anticipate that his total offense level will be 41, his criminal history category will be III, and his advisory guideline range will be 360 to life. Pursuant to Fed. R. Crim P. 11(c)(1)(C), in light of (1) the current guideline calculations involving the espionage for which defendant has already been convicted and sentenced to 283 months, (2) U.S.S.G. § 5G1.3 involving a term of imprisonment resulting from another offense that is relevant conduct to the instant offense of conviction and the adjustment for the time defendant has been incarcerated that will not be credited to defendant's current sentence, (3) the statutory sentencing factors in 18 U.S.C. § 3553(a), and taking into account all of the facts and circumstances of this case, including the nature and seriousness of the offense conduct and defendant's history and characteristics, the parties agree that a downward variance to a sentence of 96 months (8 years) imprisonment, consecutive to the term of imprisonment defendant is currently serving in the Bureau of Prisons based upon his 1997 conviction for Espionage in the Eastern District of Virginia., and a three-year term of supervised release, is appropriate in this case. The government is not seeking a fine.

8. **Additional Departures, Adjustments, or Variances:** The USAO agrees not to seek any upward departures, adjustments, or variances to the advisory sentencing guideline range, or to seek a sentence in excess of that range, except as specified in this agreement. Defendant agrees not to seek any downward departures, adjustments, or variances to the advisory sentencing guideline range under the sentencing guidelines provisions, or under 18 U.S.C. § 3553, or to seek a sentence below that range, except as specified in this agreement.

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9. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that: (1) the sentence imposed exceeds the statutory maximum, or (2) the Court arrives at an advisory sentencing guideline range by applying an upward departure under the provisions of Guidelines Chapters 4 or 5K, or (3) the Court exercises its discretion under 18 U.S.C. § 3553(a) to impose a sentence which exceeds the advisory guideline sentencing range. Should defendant seek an appeal, despite this waiver, the USAO may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

10. **Forfeiture of Assets:** By signing this agreement, defendant knowingly and voluntarily forfeits all right, title, and his interest in and to \$9500 in United States currency seized on December 15, 2008 that is currently in the possession of the United States, pursuant to 18 U.S.C. § 982. Defendant also agrees not to file a claim, to the listed currency in any civil, administrative or judicial proceeding which has been initiated by the Federal Bureau of Investigation. Defendant further waives the right to notice of any forfeiture proceeding involving the currency. Defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses to forfeiture, including any claim or defense under the Eighth Amendment to the United States Constitution, and any rights under Rule 32.2 of the Federal Rules of Criminal Procedure. Finally, defendant agrees that forfeiture of defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon defendant in addition to forfeiture.

11. **Confidentiality/Nondisclosure/Assignment of Proceeds:**

Defendant acknowledges that, in connection with his previous employment with the Central Intelligence Agency (CIA), he entered into certain agreements prohibiting the unauthorized disclosure of classified information, confidential information, and other information acquired as a part of defendant's performance of his official duties. Even though defendant is no longer a CIA employee, defendant acknowledges his continuing duties and obligations under these agreements.

Defendant understands and acknowledges his legal obligations to refrain from the unauthorized oral or written disclosure of information derived from the United States government. Should defendant at any time author or participate in the creation of any book, writing, article, film, documentary or other production, or otherwise provide information for purposes of publication provided through interviews with freelance writers or representative of any media organization or entity, defendant hereby agrees first to submit in a timely fashion said book, writing, article, film, documentary, or information to the CIA for timely prepublication review and deletion of information which, in the discretion of the CIA, should not be published or disseminated on the grounds of national security or on such other grounds as are already the subject of defendant's preexisting agreements with the CIA.

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Defendant agrees to execute an assignment to the United States of any profits or proceeds which he may generate in connection with any publication or dissemination of information describing his work at the CIA, his espionage activities, or the facts and circumstances leading to the arrest and conviction of defendant and his son in this case. This assignment shall include all profits and proceeds defendant generates, regardless of whether such profits and proceeds are payable to himself or to others directly or indirectly. The assignment is attached and hereby incorporated in this agreement.

Defendant shall have no contact with any foreign government or agents thereof, and shall not seek or accept, personally or through another person or entity, any benefit from such government or agent thereof, and should such a benefit be received by defendant or any current or future member of his family, or some other person or entity on his behalf or the behalf of such family members, he agrees to notify the CIA of such benefit, and he hereby assigns any right he has in such a benefit to the United States.

Defendant agrees to notify the CIA immediately of any contacts he intends to have with any media, so that representatives of the intelligence community may be present to prevent the unauthorized disclosure of information. Such contacts include, but are not limited to, contacts in person, by electronic means, by telephone, or by public or private mail carrier. This provision covers contacts relating to any media interview, and contacts with any individual where the subject of the contact involves the publication of any book, article, scripts or other work relating to defendant's past espionage activities, past employment with the CIA or the facts of this case involving his son.

Defendant is aware of the provisions of 28 C.F.R. § 501.2 governing conditions of incarceration in national security cases and acknowledges that the United States reserves the right to exercise these provisions.

12. **Terms of 1997 Plea Agreement Still in Effect:** Defendant agrees that the terms of his plea agreement in the Eastern District of Virginia executed by defendant February 28, 1997, are still in effect and nothing in this agreement is intended to alter or override those terms.

13. **Court Bound:** This plea agreement is entered into under Fed. R. Crim. P. 11(c)(1)(C). Defendant understands that the Court may accept this agreement, reject it, or defer its decision until a presentence report has been prepared. If the Court accepts this agreement, the Court will be bound to impose a sentence in accordance with the provisions hereof. If the Court rejects this agreement, defendant shall have the right to withdraw his guilty plea, and both parties shall be free to proceed as if this agreement did not exist. The USAO may withdraw from this plea agreement if the Court imposes a sentence less than that agreed upon herein.

14. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

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15. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.

16. **Memorialization of Agreement:** No promises, agreements or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

Sincerely,

DWIGHT C. HOLTON
United States Attorney

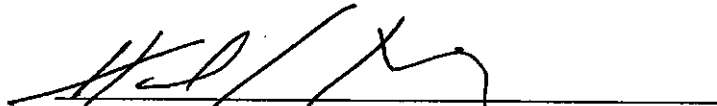


PAMALA R. HOLSINGER
ETHAN D. KNIGHT
Assistant United States Attorneys

I have carefully reviewed every part of this agreement with my attorney. I understand and voluntarily agree to its terms. I expressly waive my rights to appeal as outlined in this agreement. I wish to plead guilty because, in fact, I am guilty.

4 Nov 2010

Date

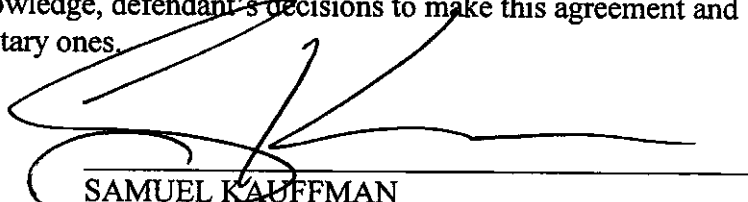


HAROLD JAMES NICHOLSON
Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

11/4/2010

Date




SAMUEL KAUFFMAN
Attorney for Defendant

ASSIGNMENT

I, HAROLD JAMES NICHOLSON, in consideration of the plea agreement in the matter of *United States v. Harold James Nicholson*, District of Oregon Case No. 09-cr-40-1-BR, do hereby assign and transfer to the government of the United States of America all my right, title and interest in any proceeds or profits which may be obtained, received or generated in connection with any book, magazine article, publication, interview, movie, screenplay, theatrical or television production, and any other depiction or commercial venture, regarding: (1) any aspect of my employment by the Central Intelligence Agency; (2) any of the facts and circumstances leading to my arrest in this case; or (3) my espionage activities with, for and on behalf of any foreign government. This assignment shall be binding upon my designees, agents, heirs and assigns.

Dated: 4 Nov 2010


HAROLD JAMES NICHOLSON
Defendant


SAMUEL KAUFFMAN
Attorney for Defendant